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IN THE

Supreme Court of the United States

October Term, 1969

No. 1139

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

against

HAROLD KONIGSBERG,

Petitioner.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONER'S REPLY BRIEF FOR THE PETITION FOR A WRIT OF CERTIORARI

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Reply—Statement of the Case

In the respondent's brief in opposition to the petition for certiorari, The People of the State of New York attempt to deliberately confuse the matter of petitioner's direct appeal from a conviction in the New York State Supreme Court, New York County, for 4 counts of extortion and 1

count of conspiracy to commit extortion in which petitioner was sentenced on April 10th, 1967, to 30 to 44 years in State Prison,[1] with the 12-count contempt information pending in the New York City Criminal Court, New York County, in which petitioner has never been tried and respondent steadfastly refused to accord petitioner a trial, maintaining at the same time open charges against petitioner since April 7th, 1967, in New York and a State detainer against petitioner at his present place of confinement at the United States Medical Center, for Federal Prisoners, Springfield, Missouri, where petitioner is serving a Federal sentence.[2]

The respondent's patently obvious intention is to ask this Court to assign the *alleged delay* in the prosecution of petitioner's direct appeal to the New York State Appellate Division, First Department, from the extortion conviction to the trial to which petitioner is entitled in the New York City Criminal Court on the contempt information. The validity of the New York Supreme Court indictment for extortion and assault and the disposition of the New York State appeal from petitioner's 30- to 44-year sentence in no way effects the legal significance of the Criminal Court information involving other subject matter.

1. Petitioner's direct appeal from his conviction in the New York State Supreme Court was argued in the Appellate Division, 1st Department, on February 5th, 1970. No decision has been rendered as of this date. The Appellate Division had no reason to consider the Criminal Court information since petitioner has never been tried nor does it have anything to do with the direct appeal from the extortion conviction.

2. Petitioner was sentenced in the United States District Court for the District of New Jersey, on July 16th, 1963, to a term of 10 years for violation of 18 U.S.C. §659.

Reply—Argument (Respondent's Opposition Brief, pp. 8-11)

Respondent does not deny in its opposition that petitioner is being denied a speedy trial and a jury trial in the New York City Criminal Court. Nor does it mention that by virtue of maintaining an *open case* against petitioner until such time as it knows the appellate disposition of another unrelated case emanating from another Court is a failure in due process itself and moreover has the collateral effect of lodging a State detainer against petitioner in his present Federal confinement. *Kane* v. *Virginia* (4th Cir., January 19, 1970) 6 CrL 2328.

The record is clear as to the following:

1. Petitioner has demanded a speedy trial.

2. The New York authorities have failed and refused to make any effort to obtain him for trial from the United States Attorney General pursuant to his authority under 18 U.S.C. §4085.

3. Petitioner has evidently exhausted his State remedies as required by 28 U.S.C. §2254.

4. The respondent has acknowledged that it does not wish to try the petition on the contempt information. (Petitioner's Appendix I, pp. 33a-34a.)

5. Petitioner is presently a Federal prisoner and was so at the time of the acts complained of in the New York Criminal Court Information.

6. The petitioner during December 7th, 1966 to February 9th, 1967, the period covered by the Criminal Court Information, was a Federal prisoner in Federal custody and certified insane pursuant to 18 U.S.C. §4241.

Having exhausted all his state remedies without vindication of his constitutional and civil rights, petitioner has no other remedy than to seek redress in the Federal tribunals. The respondent argues for a formalistic interpretation of 28 U.S.C. §1443 (1) cloaking it specifically and exclusively in terms of racial inequality.

The right to a speedy and jury trial are constitutional and civil rights which the petitioner cannot enforce in the New York City Criminal Court. The record here reflects that the pervasive and explicit denial to petitioner of a speedy and jury trial is the avowed purpose of the respondent and as such this conduct comes within the legal import of Section 1443.

Conclusion

The petitioner's petition for a writ of certiorari should be granted.

Respectfully submitted,

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February, 1970